IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

Bail Appl..No. 4778 of 2007()

CRIME NO.141/07 OF KALIYAR POLICE STATION

PETITIONERS: ACCUSED 1 & 2:

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1. KURIAKOSE, S/O.MATHAI, AGED 65,
CHEMBAKATHINAL HOUSE, VANNAPPURAM P.O.,
THODUPUZHA.

2. MARY, W/O. KURIAKOSE, DO, DO.

BY ADV. SRI.N.RATHEESH
SMT.SUMA RATHEESH

RESPONDENTS:

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1. THE SUB INSPECTOR OF POLICE,
KALIYAR POLICE STATION, KALIYAR, THODUPUZHA.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No.4778 OF 2007

Dated this the 7th day of August, 2007

ORDER

Application for anticipatory bail. The petitioners are spouses. The 1st petitioner is aged 65 years. They had availed loan from a Bank. As security for the loan, the title deed of the 2nd petitioner was deposited/mortgaged before the Bank. They now face allegations under Secs.406 and 420 of the IPC. A crime has been registered on the basis of a complaint filed by the Bank Manager. It is alleged that the petitioners are guilty of culpable indiscretion.

2. What is the crime? The allegation is that after the charge was created, a portion of the property covered by the document was sold by the 2nd petitioner in collusion with the 1st petitioner to others. How does this amount to cheating in law? Every breach of promise, assuming there is a breach of promise, will not amount to cheating under the criminal law.

If the purchaser is willing to take the property subject to charge, I am unable to find any offence committed by the mortgagor in assigning the property subject to the mortgage which has already been created. It must be noted that it is not the purchaser who raises the complaint of cheating. It is only the Bank, which is entitled to enforce the security against the transferee, which complains of the alleged cheating.

3. I do not intend to express any final opinion on the disputed facts. Suffice it to say that I find merit in the prayer of the petitioners for anticipatory bail subject to conditions which shall ensure the interests of a fair, efficient and expeditious investigation. Anticipatory bail can be granted to the petitioners, I am satisfied.

4. The learned Public Prosecutor also does not oppose the prayer for anticipatory bail.

5. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioners shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 14/8/07. They shall be released on regular bail on their executing bonds for Rs.25,000/- each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 12 p.m. on 16/8/07 and thereafter as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if these directions were not issued at all;

(iv) If the petitioners were arrested prior to their surrender on 14/8/07 as directed in clause (i) above, they shall be released on their executing bonds for Rs.25,000/- each without any sureties undertaking to appear before the learned Magistrate on 14/8/07.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge